

OFFICE OF SPECIAL MASTERS

No. 06-168V

October 13, 2006

Not to be Published

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DEBRA ANN ANDERSON,

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Petitioner,

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v.

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Entitlement decision; arm pain  
not objectively confirmed; no  
proof that symptoms lasted  
more than six months or that  
flu vaccine caused them

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SECRETARY OF THE DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

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Respondent.

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Debra Ann Anderson, Sioux Falls, SD, for petitioner (pro se).

Michael A. Milmo, Washington, DC, for respondent.

**MILLMAN, Special Master**

**DECISION<sup>1</sup>**

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

Petitioner filed a petition on March 1, 2006, under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10 et seq., alleging that a flu vaccination she received on October 24, 2005 caused her arm pain within one day.

## **FACTS**

Petitioner was born on July 20, 1956. Med. recs. at p. 1. (Since petitioner did not number the medical records, the undersigned numbered the pages she received as a copy.)

On March 15, 2005, petitioner saw Dr. Kim A. Pederson with a history of fibromyalgia and chronic fatigue syndrome. She had lip numbness and discomfort in her ears. Med. recs. at 24.

She received a flu vaccination on October 24, 2005. Filing of May 18, 2006.

On November 4, 2005, she went to Sioux Valley Clinic urgent care, stating her left arm had pain on October 25, 2005, she could not turn her head, and she saw a chiropractor on October 28, 2005. She took two Advil that morning and also had nasal drainage. Med. recs. at p. 3.

On November 7, 2005, petitioner returned to Sioux Valley Clinic urgent care, stating that her pain was a number ten, that she received flu vaccine on October 25, 2005 (not October 24<sup>th</sup>), that she had immediate pain after the flu shot, that on October 26, 2005, she could not move her head, and that she reported pain as numbness. Dr. Clayton Van Balen diagnosed deltoid pain secondary to injection. Med. recs. at pp. 5, 6, and 9.

On November 10, 2005, Dr. C.E. Flohr analyzed an x-ray of petitioner's left shoulder. He did not see any abnormality. R. Ex. A filed by respondent on August 13, 2006 since petitioner mailed respondent the records.

Also on November 10, 2005, petitioner saw Dr. Pederson complaining of left arm pain. R. Ex. A, p. 22. She had a normal range of motion of her left arm although it hurt to abduct the arm. Subjectively, she had numbness in the hand. Petitioner indicated to Dr. Pederson where she received her flu vaccination. He commented that the area was a little high, but he could not tell positively that this was where it was administered. R. Ex. A.

On November 17, 2005, petitioner saw Dr. Pederson for a recheck of her arm. She complained of subjective numbness on the dorsal aspect of her left hand. She complained of pain from her left shoulder to her elbow. X-rays showed some disc space narrowing at the C5-C6 level. R. Ex. A.

On December 1, 2005, petitioner had an electromyography and nerve conduction study. Dr. Todd A. Zimprich, a neurologist, found the study to be normal. There was no electrophysiologic evidence of a radiculopathy, plexopathy, or mononeuropathy affecting petitioner's left upper extremity. There was also no evidence of a more diffuse myogenic or large fiber neurogenic disorder. Filing of May 2, 2006.

Dr. H.A. Payne wrote for the same study that petitioner had normal left upper extremity peripheral nerve conduction. She had no evidence of peripheral neuropathy or localized peripheral nerve entrapments in the left upper extremity. Filing of May 2, 2006.

On December 5, 2005, petitioner saw Dr. Pederson, still complaining of a lot of pain in her arm with numbness that seemed to come and go. She had subjective numbness and weakness in her arm. R. Ex. A.

On December 15, 2005, petitioner saw Dr. Zimprich, who noted she had a previous history of somatoform disorder. R. Ex. A. On examination, her bulk, tone, and strength were

normal and symmetric in the bilateral deltoids, triceps, biceps, brachioradialis, wrist and finger extensors/flexors, and intrinsic hand muscles, bilateral hip flexors, adductors, abductors, quadriceps, hamstrings, foot and toe dorsiflexors and plantar flexors as well as foot invertors and evertors. Her deep tendon reflexes were normal and symmetric in the biceps, triceps, brachioradialis, patellar and Achilles tendons. Her sensation was normal and symmetric to pin prick, light touch, and proprioception. There was no change in color or temperature of the left upper extremity compared to the right. There were no fasciculations, rashes, or focal lesions throughout the left upper extremity. *Id.* Dr. Zimprich found petitioner's symptoms of left upper extremity pain and paresthesias unclear. *Id.*

Dr. Zimprich noted that petitioner had no clear weakness or persistent lack of sensation. She had no fasciculations, cramps, or atrophy. She had been evaluated in 1991 by Dr. Freeman for numerous neurologic symptoms. At that time, no clear etiology of her symptoms was determined. She underwent formal neuropsychometric testing by Dr. McGrath whose primary impression was that patient had a primary somatoform disorder. He recommended ruling out an "adjustment disorder with physical complaints versus psychological factors affecting a physical condition." *Id.*

On December 22, 2005, petitioner's chiropractor Dr. D.E. Anderson (the undersigned is unaware whether Dr. Anderson is a medical doctor) wrote that petitioner had neuralgia in her left arm and radiculitis, acute moderate cervical strain/sprain, acute sub occipital headache, acute moderate thoracic strain/sprain, and myofascial pain syndrome. He had been treating her since January 2, 2006 (?) with spinal manipulations, ultrasound, and electric muscle stimulation. The cervical pain and headaches improved greatly. The left arm neuralgia and radiculitis were still

“guarded.” Petitioner was to see him once a week. It is unclear that Dr. Anderson had the results of the neurologist showing petitioner had a normal EMG and nerve conduction study. Filing of May 18, 2006.

On January 10, 2006, petitioner had an autonomic reflex screen. Dr. Zimprich stated this was normal. There was no electrophysiologic evidence of a focal or diffuse autonomic disorder. Filing of May 2, 2006.

On January 20, 2006, petitioner’s workmen’s compensation claim was denied because there was “no objective evidence of a physical condition known to be associated with an influenza vaccination.” Med. recs. at p. 20.

On February 2, 2006, petitioner had autonomic testing and lab results which were coming back okay. Med. recs. at p. 30.

On August 3, 2006, Dr. Pederson wrote a letter stating that petitioner had pain in her left arm where she received influenza vaccine, “but I cannot say with any certainty that her pain is a result of the influenza vaccine.” R. Ex. A.

In a letter accompanying what became respondent’s Ex. A, petitioner states she cannot provide any more evidence and that she has a new address: 600 North Eagle, Sioux Falls, SD 57107.

## **DISCUSSION**

To satisfy her burden of proving causation in fact, petitioner must offer "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury.” Althen v. Secretary of HHS,

418 F. 3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Secretary of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

A persuasive medical theory is demonstrated by “proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury[,]” the logical sequence being supported by “reputable medical or scientific explanation[,]” *i.e.*, “evidence in the form of scientific studies or expert medical testimony[.]”

In Capizzano v. Secretary of HHS, 440 F.3d 1317, 1325 (Fed. Cir. 2006), the Federal Circuit said “we conclude that requiring either epidemiologic studies, rechallenge, the presence of pathological markers or genetic disposition, or general acceptance in the scientific or medical communities to establish a logical sequence of cause and effect is contrary to what we said in Althen...”

Close calls are to be resolved in favor of petitioners. Capizzano, *supra*, at 1327; Althen, *supra*, at 1280. *See generally*, Knudsen v. Secretary of HHS, 35 F.3d 543, 551 (Fed. Cir. 1994).

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, *supra*, at 1149. Mere temporal association is not sufficient to prove causation in fact. Hasler v. US, 718 F.2d 202, 205 (6<sup>th</sup> Cir. 1983), *cert. denied*, 469 U.S. 817 (1984).

Petitioner must show not only that but for the vaccine, she would not have had arm pain, but also that the vaccine was a substantial factor in bringing about her arm pain. Shyface v. Secretary of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

The Federal Circuit stated in Althen, *supra*, at 1280, that “the purpose of the Vaccine Act’s preponderance standard is to allow the finding of causation in a field bereft of complete and direct proof of how vaccines affect the human body.”

The Federal Circuit in Capizzano emphasized the opinions of petitioner's four treating doctors in that case. 440 F.3d at 1326.

In the instant action, petitioner has offered no evidence of causation except her own assertions. Nothing in the medical records substantiates that she has a neurological problem with her arm. She did not provide an expert medical report to substantiate that she had a physical problem with her arm. In fact, Dr. Pederson expressly states that he cannot relate her complaints of arm pain to the influenza vaccination. Her chiropractor is not established as a medical doctor even though he uses "Dr." before his name. Any diagnoses of reaction to the flu vaccine were before a neurologist objectively tested her and found her to be normal. Her medical history includes a past occurrence where her complaints were not borne out objectively (thus the diagnosis of somatoform condition).

The Vaccine Act does not permit the undersigned to rule in favor of petitioner based solely upon her allegations absent confirmation from the medical records or medical opinion. 42 U.S.C. § 300aa-13(a)(1): "The special master ... may not make such a finding [in favor or petitioner] based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion."

Even if the undersigned were to accept that petitioner had an initial reaction to her vaccination, she has provided no objective proof that that reaction lasted more than six months, as the Vaccine Act requires. 42 U.S.C. § 300aa-11(c)(1)(D)(i). Petitioner states she has no further evidence to file.

Petitioner has not made a prima facie case of causation in fact and her petition must be dismissed.

## **CONCLUSION**

This petition is dismissed with prejudice. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance herewith.<sup>2</sup>

**IT IS SO ORDERED.**

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DATE

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Laura D. Millman  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing his right to seek review.